

RULE 1: SCOPE

These Rules govern the procedure in the District Court of the Eighth Judicial District of the State of Montana. They shall be construed to secure the just, speedy and inexpensive determination of every action.

These Rules supplement the Montana Rules of Civil Procedure, Uniform District Court Rules, statutes related to Criminal Procedure and other applicable provisions of Montana Code Annotated. All prior Rules issued by the Eighth Judicial District are superceded in their entirety.

RULE 2: DEPARTMENTS OF THE DISTRICT COURT

The District Court of the Eighth Judicial District of the State of Montana is hereby divided into four departments:

Department A -- presided over by Judge Thomas M. McKittrick

Department B -- presided over by Judge Julie Macek

Department C -- presided over by Judge Kenneth R. Neill

Department D – presided over by Judge Dirk Sandefur

The position of Chief Judge is assumed for a calendar year by each presiding judge in the year set forth below and continuing in the same order thereafter:

Department A - 2006

Department B - 2007

Department C - 2008

Department D - 2005

The District Court Judges shall meet monthly at a regular time and place designated by the Chief Judge and at such other times as they shall agree. Decisions of the District Court are made by unanimous vote of the District Judges.

All four judges shall serve simultaneously as Youth Court Judges. The Chief Judge shall serve as Chief Youth Court Judge.

RULE 3: DIVISION OF BUSINESS

All matters filed in each docket shall be allocated among the four departments in random rotation. Depending upon the department in which

the case is filed, the case designation shall begin with the letter "A", "B", "C" or "D". If jurisdiction over the case passes to another judge in the District, that judge's department designation shall be included after the last number of the case designation in parenthesis as either "(a)", "(b)", "(c)" or "(d)". Trials and hearings on contested matters shall be before the judge of the department having jurisdiction. Pursuant to Section 3-1-308 MCA, the first district judge substituted or disqualified shall call in all subsequent judges by first attempting to call in another judge of the Eighth Judicial District prior to calling in a judge from another district.

RULE 4: FILING OF PLEADINGS AND OTHER PAPERS

A. **Civil Rules Applicable:** Any pleading filed in any civil action which does not conform to Rule 10 or 11 of the Montana Rules of Civil Procedure may be stricken by the Court on its own initiative.

B. **Form of Papers Presented for Filing:** Documents should be firmly bound with holes punched at the top ready for placement in the Court file. Any filing fee required by statute must accompany the document or it will not be filed. All papers filed in any action must conform to Rule 1 of the Montana Uniform District Court Rules. Any paper not in conformity with this Rule shall not be filed by the Clerk and shall be returned to the party submitting it. If filed, it may be stricken by the Court.

C. **Necessary Copies Presented:** When the clerk is required to provide copies, parties must furnish to the clerk all necessary copies of any such pleading, proposed order or other matter filed of record in any cause, so as to enable the clerk to provide conformed copies. Pre-addressed envelopes for all parties of record are likewise to be provided for distribution of copies by the clerk.

D. **When Leave of Court Required:** When leave of Court is required before a pleading can be filed, a proper motion must be filed and served. An original of the pleading should be attached (to be removed and stamped for filing immediately upon granting of the motion). This rule does not apply to filing an Information in a criminal case.

RULE 5: COURT RECORDS

A. **Withdrawal of Files or Papers.** The clerk may not permit files

or documents to be removed from the office except upon order of the Court for good cause shown. The clerk must obtain a receipt from any party removing any file or Court record.

B. Juvenile (Delinquent Youth and Youths In Need of Care) and Adoption Matters. Except as provided by statute, the records and files in juvenile and adoption actions shall not be withdrawn, examined, or inspected by anyone except upon order of the Court.

C. Withdrawal Prohibited. No will, bond, or undertaking shall be taken from the clerk's office under any circumstances, and no judgment before it is recorded.

D. Exhibits. Exhibits offered during a trial may be withdrawn at any time after trial upon stipulation of counsel. After a judgment has become final and appeal rights no longer exist, any party may withdraw any exhibit which that person has offered into evidence, unless some person has theretofore filed with the clerk notice that said third person is entitled to the exhibit. Withdrawal shall then be permitted only on order of the Court.

If exhibits are not withdrawn within thirty days after the judgment has become final and non-appealable, the clerk shall give ten days' notice to the party offering the exhibit of his/her intention to dispose of the same and may do so, if not then withdrawn, after obtaining a Court order to destroy the exhibit.

RULE 6: UNCONTESTED CALENDAR

A. Uncontested Calendar Day. The uncontested calendar shall be heard at 9:00 A.M. each Wednesday. The calendar shall be rotated among the judges on an agreed upon basis.

B. What Matters May Be Heard on The Uncontested Calendar. All uncontested matters, judgments by default, probate proceedings, uncontested *ex parte* matters, and the like shall be heard on the uncontested calendar, except as otherwise ordered by the Court for good cause shown.

C. Scheduling of Uncontested Matters. Matters may be placed on the uncontested calendar only upon written request to the Clerk of Court not later than noon on the preceding Tuesday.

D. **Contested Matters Shall Be Postponed.** Any matter set for the uncontested calendar which proves to involve contested issues shall be subject to postponement to be set on the contested calendar.

E. **Limitations.** No matter may be set on the uncontested calendar until the motion or other documentation and all relevant supporting documents have been filed with the clerk. A proposed order, decree, or judgment may be presented to the Court at or before the time the matter is to be heard.

RULE 7: CONTESTED MATTERS

A. **Disposition of Motions.** All motions shall be disposed of pursuant to Rule 2 of the Uniform District Court Rules, or as otherwise required by the Montana Rules of Civil Procedure.

B. **Notice of Issue.** When all briefs have been filed, or the time for filing of briefs has expired, at least one party shall file a "Notice of Issue" with the Court indicating that the matter is ready for ruling by the Court. The party filing the Notice of Issue shall supplementally serve a copy of the Notice of Issue on the Court at chambers and shall include certification of such supplemental service in the certificate of service for the original Notice of Issue. The Clerk shall thereupon deliver the original Notice of Issue and the Court file to the judge having jurisdiction.

C. **Motions to Dismiss.** Motions to Dismiss by a Defendant not supported by a timely brief shall be deemed overruled and the moving party shall have twenty (20) days after notice from the Clerk to further plead.

D. **Briefs.** Except with leave of Court for good cause, Initial and Answer Briefs shall not exceed 20 pages. Reply Briefs shall not exceed 10 pages.

E. **Requests for Oral Argument.** When counsel desire oral argument on a motion, other than a motion in which oral arguments are mandatory unless waived by all parties, counsel shall state with their Notice of Issue or in a separate request for oral argument their reasons in support of oral argument and why the written briefs are inadequate to fully and satisfactorily articulate their position. Oral argument will be set only by Court order, whether upon motion of a party or upon a *sua sponte* determination that oral argument would be beneficial. A proposed order shall accompany any

request for oral argument and the Clerk of Court shall promptly deliver both documents to the judge.

F. Notice to the Judge of Settlement. In the event any contested matter set for hearing is resolved between the parties, the judge's judicial assistant shall be immediately advised so that other matters may be scheduled in the time previously allotted for that case. A written stipulation or appropriate pleading shall subsequently be filed within two (2) days. Failure to abide by this provision may result in imposition of sanctions by the Court.

G. Discovery Motions. The Court will deny any motion pursuant to Rules 26 through 37 of the Montana Rules of Civil Procedure, unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange such a conference, and opposing counsel willfully refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Montana Rules of Civil Procedure 37(a)(4). Counsel for the moving party shall include in the motion a statement of compliance with this rule.

H. Contested Hearings. Any motion requiring presentation of testimony shall be scheduled as a contested matter with the appropriate Request for Hearing pleading being presented to the judge's judicial assistant.

I. Courtesy Copies. If any pertinent document is filed within 48 hours of a contested hearing or oral argument, a copy thereof shall be delivered to the judge's chambers.

J. Motions to Continue or for Extensions. Motions to continue and for extensions must be in writing and shall state the position of opposing counsel to the motion. It is not sufficient that the motion state that opposing counsel could not be contacted. If a motion to continue or for extensions does not state the position of opposing counsel, the motion shall be subject to Rule 2, Uniform District Court Rules. The Court will not rule on the motion until the response time has expired.

K. Reminders to the Court. If a judge has any matter under advisement for more than 90 days, any party affected thereby may send to the judge a letter, with copies to all counsel, describing the matter under advisement and stating the date it was taken under advisement.

RULE 8: TIME LIMITS

In any hearing, contested or uncontested, or in any show cause hearing, injunction hearing or trial of any case, the Court may direct the parties to state the amount of time their case will take to present. The Court may then impose time limits on the presentation by each party, and retains the discretion to allot a lesser time than that requested by each party. In the event time limits are imposed, the Court has full authority and discretion to enforce those limits.

RULE 9: SCHEDULING ORDERS

A. **Scheduling Orders.** When a case is at issue, any party may file a motion for a scheduling order. A scheduling order shall be issued in substantially the form of Exhibit A or Exhibit B (domestic case) attached. In lieu of a motion for scheduling order, any party may move for a scheduling conference. The party filing the Motion shall supplementally serve a copy of the Motion on the Court at chambers and shall include certification of such supplemental service in the certificate of service for the original Motion.

The dates in the scheduling order shall not be changed absent Court order upon a showing of good cause. Motions to extend deadlines or dates shall include a statement of the trial date, if set.

B. **Exemptions.** Pursuant to Rule 16(b), M.R.Civ.P., the following matters are exempt from the scheduling procedure required by this Rule (Exhibit A) unless such a case becomes a contested case:

- (1) juvenile cases;
- (2) URESA actions;
- (3) dependent and neglect cases;
- (4) abstracts and transcript of judgment and enforcement of judgment;
- (5) adoptions;
- (6) sanity;
- (7) probates;
- (8) criminal cases (included to eliminate the possibility of confusion);
- (9) municipal court, justice court and small claims appeals;
- (10) administrative appeals
- (11) seizures and forfeitures;

- (12) habeas corpus;
- (13) name changes; and
- (14) conservatorships and guardianships.

Scheduling in the above matters shall proceed according to orders issued in each case.

RULE 10: SETTLEMENT CONFERENCES

A. **Settlement Conferences Required.** In each civil case, there will be a settlement conference. The conference shall be a master or mediator-supervised settlement conference, which is provided for in the Scheduling Order prepared and issued in accordance with Rule 9 of the Local Rules. (Sample Exhibit "A" and "B".)

B. **Proceedings Confidential.** No person present at a settlement conference, including the settlement master or mediator, shall be subject to examination concerning statements made by any person or the positions of the parties at the settlement conference. The parties will not subpoena or otherwise require the settlement master or mediator to testify regarding the settlement conference or the settlement master's or mediator's opinions regarding the case.

RULE 11: TRIALS AND TRIAL SETTINGS

A. **Trial Dates.** Trial dates shall be set at any stage of the proceedings deemed appropriate by the presiding judge.

B. **Jury Panels.** At least thirty days prior to the commencement of the jury term, a panel of jurors shall be drawn to be used by all judges. The jury term is January through December. The clerk of court shall, upon a juror's service on a trial, remove that juror's name from the panel (unless requested by the juror to serve on more panels). Any juror who comes in for selection on a case and who is not called to serve on the trial, shall have their name put back into the panel for further selection.

C. **Six Person Juries.** Pursuant to ' 3-15-106, MCA, in all civil actions where the relief sought in the Complaint is under the sum of \$10,000.00, the trial jury shall consist of six persons. The parties may stipulate to six-person juries in other civil cases.

D. Voir Dire Examination. Time limits for voir dire examination in civil cases may be set at Final Pre-Trial Conference.

The only proper purpose of voir dire of jurors is to select a panel who will fairly and impartially hear the evidence presented and render a just verdict and to determine the grounds for any challenge for cause.

As a general rule, counsel should not:

- (1) Ask any questions of an individual juror that are susceptible of being asked collectively.
- (2) Ask questions covered by and answered in the juror questionnaire, except to explore some questionnaire answer in greater depth.
- (3) Repeat questions asked and answered, even though asked by opposing counsel.
- (4) Use voir dire for the purpose of attempting to instruct the jury on the law. That is the Court's function.
- (5) Use voir dire for the purpose of arguing the case.
- (6) Ask a juror what his or her verdict might be under any hypothetical situation based on any expected evidence or otherwise.

Upon failure of counsel to abide by this rule, the Court may assume voir dire of the jury. In such case, the Court may require counsel to submit in writing specific questions to be asked by the Court.

E. Vacating Trials. If a jury trial setting is vacated pursuant to settlement or a motion within 5 days of trial, the parties or any of them may be assessed jury costs incurred, including a clerk's salary for up to three days and sheriff's costs.

RULE 12: CRIMINAL ACTIONS

A. Use of Forms. A written Acknowledgment and Waiver of Rights in substantially the form attached as Exhibit C shall be presented to the Court by defense counsel at or before the time of a guilty plea. Plea Agreements shall be in substantially the form of Exhibit D-1 (binding) and D-2 (non-binding) attached.

B. Omnibus Hearings. Except as otherwise provided by order of the presiding judge, the form order attached as Exhibit E shall be completed at the Omnibus Hearing.

C. Status Hearings. A Status Hearing shall be held on the record before the Court. The Defendant shall be present. Prior to the Status Hearing, counsel for the prosecution and defense shall have conducted plea negotiations. They shall report thereon to the Court at the Status Hearing. If a Plea Agreement has been reached, the Court may take the change of plea at that time. The parties shall be prepared to discuss the status of discovery, likely motions, the scheduling of hearings, whether there is reason to change the trial date and any other pre-trial issues.

D. Arraignment. At arraignment, the Court shall issue an order substantially in the form of Exhibit F attached.

E. Motions. A courtesy copy of all motions shall be submitted to the presiding judge together with a proposed order setting hearing. Unless otherwise ordered, the following motions do not require a brief and may be ruled on summarily without prior notice to opposing counsel:

Motions to Set/Reset/Vacate Hearings for:

- | | |
|--|------------------------------|
| - Arraignments | - Change of Pleas |
| - Answer Hearing | - Sentencing |
| - Bail Hearing | - Evidentiary Hearings |
| - Status Conference | - Dispositional Hearings |
| - Omnibus Hearing | - Miscellaneous Hearings |
| - Final Pre-Trial Conference- Vacate any Pre-Trial Hearing | - and Set for Change of Plea |
| - Jury Trials | - Telephonic Hearings |
| - Bench Trials | |

Miscellaneous Motions:

- Add Witnesses
- Additional Time to File/
Respond to Briefs
- Change Conditions of
Release
- Chemical Evaluation - State
to Pay Costs
- Request for Credit For
Time Served
- State to Pay for Costs of
Deposition
- Request for Defendant to
Attend Funeral and Wear
Street Clothes
- Request for Interpreter
State to Pay Costs
- Request for Defendant to
Leave Cascade County/
State of Montana
- Discovery Request
- Neuro-Psycho Evaluation
State to Pay Costs
- Quash Transportation Order
- Quash Order
- Quash Bench Warrant
- Reinstate Bond and Release
Defendant
- Release Defendant's Personal
Property
- Seal Plea Agreement
- Sex Offender Evaluation - State
to Pay Costs
- Substitution of Counsel
- Transport Defendant
- Withdraw as Counsel of Record
- Psychological Evaluation -
State to Pay the Costs
- Mental Evaluation State to
Pay the Costs

RULE 13: DOMESTIC ACTIONS

A. Assumption of Cases Involving Families and Children by One Department. In order to better serve the needs of families and children as well as efficient administration of justice, cases involving families/children and/or conservators/guardianships shall be consolidated so that one judge has jurisdiction of all related civil and criminal proceedings. Some examples of cases which would be consolidated pursuant to this Rule are:

- (1) conservatorship civil proceeding
- (2) civil commitment proceeding
- (3) juvenile proceeding
- (4) criminal cases involving domestic violence or other
violence which affects or impacts the child directly
- (5) abuse/neglect cases and adoptions
- (6) dissolutions

In those instances where related cases have been filed in different departments, the cases shall be assumed by the Court in jurisdiction which has jurisdiction over the first case filed, but remain separate causes. Such assumption by one department will insure consistent and fully informed decisions concerning families. Inquiry shall be made at scheduling and omnibus hearings to determine if there are related cases.

B. Juvenile Cases Involving Same Transaction. Where two or more juveniles are charged with offenses arising out of the same transaction, one judge shall have jurisdiction over all such actions.

C. Parenting Plan Guidelines. The Parenting Plan Guidelines attached as Exhibit G are hereby incorporated into these Rules. Counsel shall provide a copy of these guidelines to clients in cases involving parenting.

RULE 14: STIPULATIONS

No agreement or consent between the parties, or their attorneys, shall be accepted by the Court unless made in open Court, and taken down by the court reporter or entered in the minutes by the clerk, or unless the same shall be in writing, signed by the party against whom the same may be urged, or by that party's attorney. It shall be the duty of the party relying upon such minute entry to see that the same is duly entered.

RULE 15: ABSENCE OR DISABILITY OF JUDGE

The work of the district shall be interchangeable between the judges thereof during the absence or disability of any of them or upon the request of any judge. During the absence of any judge, the judges present and presiding, or any of them, may enter orders and make disposition, temporary or final, of any case or matter pending before the absent judge. However, when any order is made for a hearing to be had thereafter, the judge present and presiding shall make the order returnable before the judge to whom it is assigned. Thereafter, it shall be the duty of counsel to consult with the assigned judge to either confirm or reset the hearing date fixed.

RULE 16: OUTSIDE JUDGE

When a case is assigned to a judge from another district, the clerk shall make and forward to such judge a complete copy of the case file to date. Likewise, copies of documents subsequently filed shall be promptly transmitted to the judge.

The outside judge shall be encouraged to schedule hearings and trials in consultation with the judicial assistant of the judge who originally had jurisdiction.

The judge of this district who originally had jurisdiction and the clerk shall promptly notify one another when they learn of any hearing or trial scheduled by the outside judge so that necessary arrangements can be made.

RULE 17: DISMISSAL OF ACTION FOR LACHES

The clerk of court will, on an annual basis, bring to the attention of the judge in whose department it is filed any cause which the pleadings show to have been at issue and no activity thereon for more than one year. An order to show cause for failure of prosecution will be issued, and the Court may dismiss the case unless good cause is shown that it should remain open.

RULE 18: ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDERS

Two originals of any order to show cause, temporary restraining order or like order shall be presented to the judge. One shall be signed by the judge as the original order and retained as part of the Court file. The other shall be issued by the clerk and shall be used for the purpose of making service.

RULE 19: JUDGMENT ON WRITTEN INSTRUMENT

In all cases in which a judgment is entered upon a written instrument, the instrument must be presented to the clerk at the time judgment is granted by the Court. The clerk shall note in ink across the face of the instrument the

fact of the entry of judgment and its date. The clerk shall sign the entry, attach the official seal, and file the instrument. The instrument shall not be removed except by the order of the Court in writing setting forth the facts of such removal.

RULE 20: RULES OF DECORUM

The District Court adopts the Courtroom Decorum and Practice Guidelines attached hereto as Exhibit "H".

RULE 21: FREE PRESS AND FAIR TRIAL

Within the spirit of the First Amendment, the presiding judge in any court proceedings open to the public shall permit the recording and broadcasting by radio and television, and the taking of photographs in the courtroom unless the judge is convinced from the particular circumstances of the individual case, or any portion thereof, that such recording, broadcasting, or photographing would substantially and materially interfere with the primary function of the court to resolve disputes fairly under the law.

The following guidelines shall apply:

TELEVISION & RADIO

The judge may limit the number of cameras in the courtroom and may order that coverage be pooled. Cameras shall be located in a preselected position and operated by one cameraman each. If pooling is ordered or agreed upon, unless the judge orders otherwise, it will be the responsibility of each broadcast news representative to achieve an understanding as to who will function at any given time and as to how the coverage will be pooled. All representatives shall share in the pool arrangement. A television camera shall give no indication as to whether it is or is not operating.

Sufficient film and/or tape capacities shall be available to alleviate film or tape changes except during Court recess.

Microphones, if utilized, shall be limited to five: one near each counsel table, one at the podium, one on the bench, and one near the witness chair. The television microphone shall also serve the radio media. All equipment shall be in place at least 15 minutes before each session.

Broadcast coverage outside the Courtroom shall be handled with care and discretion, but need not be pooled. The Jury Voir Dire Process shall not be televised or broadcast.

PRINT MEDIA

Representatives of the press, including still photographers, will be accommodated on a first-come first-served basis, and position themselves in the spectator section. Photographers/reporters will not be permitted to roam the Courtroom. No flash cameras will be permitted and the cameras used shall operate with no distracting noise.

GENERAL

Jurors' faces will not be filmed, photographed or drawn. There will be absolutely no interviews of jurors, witnesses, or court personnel during the trial either in or out of Court. There will be no available telephones or cellular telephones in the Courtroom.

RULE 22: TREATMENT COURT

The judges of the Eighth Judicial District Court of the State of Montana hereby establish a Treatment Court. The Eighth Judicial District Treatment Court seeks to improve the quality of life in our community by establishing a comprehensive, diversionary program of incentives and sanctions aimed at breaking the offender's addiction.

Possible Treatment Court participants will be screened by the County Attorney's Office and recommended to the Court for entry through a joint stipulation between the County Attorney and the defendant's attorney. Eligibility for Treatment Court will be limited to defendants charged with one of the following enumerated offenses, or a probation violation thereof :

CRIMINAL POSSESSION OF DANGEROUS DRUGS, A FELONY, in violation of Section 45-9-102 MCA;

THEFT, A FELONY, in violation of Section 45-6-301 MCA, when motivated by addiction;

ISSUING A BAD CHECK, A FELONY, in violation of Section 45-6-316 MCA, when motivated by addiction;

DECEPTIVE PRACTICES, A FELONY, in violation of Section 45-6-317, when motivated by addiction; and

FORGERY, A FELONY, in violation of Section 45-6-325 MCA, when motivated by addiction.

Defendants with prior violent or sexual offense convictions, or who have other pending felony charges, will not be eligible to take part.

The Treatment Court Judge shall have the authority to impose conditions on participants pursuant to the Court's statutory contempt powers and the contractual nature of plea agreements under Montana Law. These legal bases also provide the Treatment Court jurisdiction to sanction these offenders for failure to comply with Treatment Court conditions.

Dated this _____ day of _____, 2004.

District Judge

District Judge

District Judge

District Judge

**MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY**

As Amended Effective January, 1, 2005

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